

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

SCOTT NJOS,

Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

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CIVIL ACTION NO. 3:12-CV-1252
(Judge Kosik)

ORDER

AND NOW, THIS 28th DAY OF SEPTEMBER, 2015, IT APPEARING TO THE COURT THAT:

(1) Plaintiff, Scott Njos, an inmate confined at the United States Penitentiary Lewisburg, Pennsylvania, filed the instant action against the United States pursuant to the Federal Tort Claims Act, 28 U.S.C. § 1346 and §§ 2671-2680. The action proceeds on an Amended Complaint filed on April 29, 2013 (Doc. 18);

(2) The basis of Plaintiff's action is the alleged negligence of the United States in the maintenance of his cell and medical negligence;

(3) On May 7, 2015, Plaintiff filed a Motion for Summary Judgment (Doc. 89) with supporting documents;

(4) The United States filed an Opposition Brief on May 21, 2015 (Doc. 91);

(5) Plaintiff filed a Reply Brief on June 5, 2015 (Doc. 95);

(6) On September 1, 2015, Magistrate Judge Martin C. Carlson filed Report and Recommendation (Doc. 107), recommending that the Plaintiff's Motion for Summary Judgment be denied;

(7) Plaintiff filed Objections (Doc. 115) to the Report and Recommendation on September 16, 2015;

(8) The United States filed a Response to the Objections on September 21, 2015 (Doc. 116);

AND, IT FURTHER APPEARING THAT:

(9) When objections are filed to a Report and Recommendation of a Magistrate Judge, we must make a de novo determination of those portions of the Report to which objections are made. 28 U.S.C. §636(b)(1)(C); see Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989). In doing so, we may accept, reject or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. §636(b)(1); Local Rule 72.3. Although our review is de novo, we are permitted by statute to rely upon the Magistrate Judge's proposed recommendations to the extent we, in the exercise of sound discretion, deem proper. United States v. Raddatz, 447 U.S. 667, 676 (1980); Goney v. Clark, 749 F.2d 5, 7 (3d Cir. 1984);

(10) We have reviewed the Report and Recommendation of the Magistrate Judge in light of Plaintiff's Objections and the Government's Response and we agree with the Magistrate Judge that genuine issues of material fact exist as to the questions of negligence and contributory negligence;

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Martin C. Carlson filed on September 1, 2015 (Doc. 107) is **ADOPTED**; and,

(2) Plaintiff's Motion for Summary Judgment (Doc. 89) is **DENIED**.¹

s/Edwin M. Kosik

Edwin M. Kosik

United States District Judge

¹The Magistrate Judge directed the parties to file Status Reports in this case. Both parties have complied and agree that the matter should be scheduled for trial (Docs. 112 and 114). A pretrial conference will be set at the convenience of the court.